

CITY OF ALBUQUERQUE

Office of the Mayor/ Chief Administrative Officer**EXHIBIT 1****ADMINISTRATIVE INSTRUCTION NO: 5-19**

TITLE: Noting the applicability of State laws prohibiting firearms in City of Albuquerque Child Development Centers, Community Centers, Health and Social Service Centers, Multigenerational Centers, and Senior Centers, subject to certain exceptions

PRIMARY DEPARTMENTS: Department of Family and Community Services and Department of Senior Affairs

SECONDARY DEPARTMENTS: Department of Municipal Development, Albuquerque Police Department, Legal Department, Albuquerque Fire Rescue

As set forth in Administrative Instruction No. 8-5, it is the policy of the City of Albuquerque to ensure that safe and healthful working conditions exist for its employees, contractors and the general public whose work involves the conducting of business in city-owned buildings, on city-owned properties or in the course of normal business. In addition, the City may have liability under the Tort Claims Act for negligence in the operation of its facilities. Accordingly, it is the policy of the City to determine what federal, state and local laws apply to City facilities and to ensure such laws are observed and enforced.

This Administrative Instruction confirms that the City's Community Centers, Multigenerational Centers, and Senior Centers (collectively, the "Centers") all fall within the definition set forth in New Mexico Statutes Annotated 1978, Sections 30-7-2.1 of "school premises." In addition, Health and Social Service Centers fall within the definition set forth in NMSA 1978, § 30-7-2.4, of "university premises." Pursuant to Sections 30-7-2.1 and 30-7-2.4, it is unlawful to carry firearms at any of these facilities, subject to the exceptions set forth in, and coextensive with, those statutes.

1. The prohibition on deadly weapons and firearms in schools and universities

NMSA 1978, § 30-7-2.1(A) (1994) makes it unlawful to carry a deadly weapon on "school premises," except by "(1) a peace officer; (2) school security personnel; (3) a student, instructor or other school-authorized personnel engaged in army, navy, marine corps or air force reserve officer training corps programs or state-authorized hunter safety training instruction; (4) a person conducting or participating in a school-approved program, class or other activity involving the carrying of a deadly weapon; or (5) a person older than nineteen years of age on school premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property." Those who commit unlawful carrying of a deadly weapon on school premises may be charged with a fourth degree felony under NMSA 1978, § 30-7-2.1(C).

NMSA 1978, § 30-1-12 (1963) defines "deadly weapon" as "any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted."

NMSA 1978, § 30-7-2.4(A) (2003) makes it unlawful to carry a firearm on "university premises" except by: "(1) a peace officer; (2) university security personnel; (3) a student, instructor or other university-authorized personnel who are engaged in army, navy, marine corps or air force reserve officer training corps programs or a state-authorized hunter safety training program; (4) a person conducting or participating in a university-approved program, class or other activity involving the carrying of a firearm; or (5) a person older than nineteen years of age on university premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property." Those who commit unlawful carrying of a firearm on university premises may be charged with a petty misdemeanor under NMSA 1978, § 30-7-2.4(D).

2. Policy Rationale for State laws prohibiting firearms in public schools and universities

The US Supreme Court has long upheld laws forbidding the carrying of firearms in sensitive places such as schools. See *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008). The need for such a law in New Mexico has only become clearer since the 1994 and 2003 enactments of the State laws prohibiting the carrying of firearms on public school and university premises.

Between the Columbine massacre, which occurred on April 20, 1999, and the date of this Administrative Instruction, the United States has seen 68 mass K-12 "school shootings." Thirty-one of those 68 shootings occurred after December 14, 2012, when a mass shooter murdered 20 six- and seven-year-old school children at Sandy Hook Elementary, as well as six staff members who tried to protect them. Since 2013, American schools, including post-secondary, have seen 181 deaths and 358 injuries attributable to gunfire.

Three school shootings have occurred in New Mexico: (1) Roswell Berrendo Middle School with two injured on January 14, 2014; (2) Aztec High School with three fatalities, including the shooter, on December 7, 2017; and (3) Cleveland High School in Rio Rancho on February 14, 2019 with no physical injuries. These are in addition to the mass shooting that occurred at the Clovis public library on August 28, 2017, when a 16-year-old Clovis High School student killed two and injured four.

Strong policy considerations continue to underlie the State laws cited above. Like schools, mass shooters have targeted municipal centers such as community centers across the country. In 1999, a mass shooter killed one community member

and injured five people at the Los Angeles Jewish Community Center. In 2014, a mass shooter killed two people in a shooting at the Overland Park Jewish Community Center in Kansas. Most recently, a mass shooter killed 12 people and injured four more at a Virginia Beach municipal center.

Between August 1, 2015, and July 31, 2019, 27 gun offenses have been reported to the Albuquerque Police Department ("APD") at City community, health and social service, and senior centers (see attached map). On May 31, 2013, an eight-year-old girl was shot and killed at the City's own Alamosa Community Center. Most recently, on April 4, 2019, a shooting occurred at the Alamosa Community Center. Over that same time period, 510 gun offenses have been reported to APD within a two-block radius of the City's community centers, health and social service centers, multigenerational centers, and senior centers.

3. Applicability of Sections 30-7-2.1 and 30-7-2.4 to City facilities

In addition to the buildings and grounds that house public schools, NMSA 1978, § 30-7-2.1(B)(2) defines "public school premises" as "any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed." Under this definition, all Centers fall under the definition of public school premises.

The City's Community Centers, Multigenerational Centers, and Senior Centers are all inextricably linked to schools, provide school-related and school sanctioned activities, and even themselves serve as schools by providing various education classes. The City is party to several contracts and agreements with Albuquerque Public Schools ("APS"), reflecting joint use of the Centers. In addition, the City works with public schools in a broad array of programs and services, including, but not limited to:

- APS Access/CTAP/APS Transitional Services to provide high school age students with disabilities that need transition into areas of employment, post-secondary education/training, independent living and community connections
- APS-sanctioned or APS-related before- and after-school programming
- APS-sanctioned or APS-related school meal programs
- Performances by APS and public charter schools
- School-sanctioned transport to and from APS public schools
- Direct use of Center facilities by charter schools
- 25 playground recreation sites with APS
- Therapeutic recreation programs with APS
- Job mentorship programs
- Child and family development programs

In Fiscal Year 2019, 200,000 City youth and nearly 325,000 City adults visited City community centers. The City Playground Recreation Program served almost 270,000 children, and the City Therapeutic Recreation Program served almost

48,000 youth and 12,000 adults. The City Job Mentorship Program had an enrollment of over 1,500.

In addition to the buildings and grounds of a university, NMSA 1978, § 30-7-2.4(C)(2)(b) (2003) defines "university premises" as "any other public buildings or grounds, including playing fields and parking areas that are not university property, in or on which university-related and sanctioned activities are performed." Under this definition, all four Health and Social Service Centers fall under the definition of "university premises" because they are used for the UNM Maternity & Family Planning clinic. In addition, San Pablo Young Children's Health Center leases space to UNM. City Health and Social Service Centers serve approximately 144,000 clients annually.

As the Attorney General recently noted, local governments do not have the right to pick and choose what state laws to enforce. The state laws cited above are clear and unambiguous. The State legislature could have narrowly defined "public school premises" and "university premises" to mean only those properties owned or leased by public schools or universities. Instead, the Legislature chose expressly to include buildings and areas "that are not public school property" and "that are not university property."

4. Training and posting

The Department of Family & Community Services, Department of Senior Affairs, Department of Municipal Development Security Division, Legal Department, Albuquerque Police Department and the community risk reduction initiative of Albuquerque Fire Rescue are instructed to develop and implement training to ensure that affected employees are aware of the provisions of state law discussed above, and to make any required postings or public notices related to NMSA 1978, §§ 30-7-2.1 and 30-7-2.4.

Until such training is developed, City personnel who see a violation of the State laws cited in this Administrative Instruction should call 9-1-1 and take no further action.



Sarita Nair
Chief Administrative Officer

August 16, 2019
Effective Date